SUPREME COURT OF THE UNITED STATES.

Nos. 122, 123, 124, 125.—October Term, 1924.

Helen C. Frick, Plaintiff in Error, 122 *vs.* Commonwealth of Pennsylvania. Helen C. Frick, Plaintiff in Error, 123 *vs.* Commonwealth of Pennsylvania. Adelaide H. C. Frick et al., Executors, Plaintiffs in Error, 124 *vs.* Commonwealth of Pennsylvania. Adelaide H. C. Frick et al., Executors, Plaintiffs in Error, 125 *vs.* Commonwealth of Pennsylvania.	On Writs of Error to the Supreme Court of the Commonwealth of Pennsylvania.

[June 1, 1925]

Mr. Justice Van Devanter delivered the opinion of the Court.

These four cases involve the constitutional validity of particular features of a statute of Pennsylvania imposing a tax on the transfer of property by will or intestate laws. Act No. 258, Pa. Laws 1919, 521.

Henry C. Frick, domiciled in Pennsylvania, died testate December 2, 1919, leaving a large estate. By his will he disposed of the entire estate—giving about 53 per cent for charitable and public purposes and passing the rest to or for the use of individual beneficiaries. Besides real and personal property in Pennsylvania, the estate included tangible personalty having an actual situs in New York, tangible personalty having a like situs in Massachusetts, and various stocks in corporations of States other

than Pennsylvania. The greater part of the tangible personalty in New York,[1] having a value of $13,132,391.00, was given to a corporation of that State for the purposes of a public art gallery, and the other part,[2] having a value of $77,818.75, to decedent's widow. The tangible personalty in Massachusetts,[3] having a value of $325,534.25, was also given to the widow. The will was probated in Pennsylvania, and letters testamentary were granted there. It was also proved in New York and Massachusetts, and ancillary letters were granted in those States. Under the laws of the United States the executors were required to pay to it, and did pay, an estate tax of $6,338,898.68; and under the laws of Kansas, West Virginia and other States they were required to pay to such States, and did pay, large sums in taxes imposed as a prerequisite to an effective transfer from a non-resident deceased of stocks in corporations of those States.

The Pennsylvania statute provides that where a person domiciled in that State dies seized or possessed of property, real or personal, a tax shall be laid on the transfer of the property from him by will or intestate laws, whether the property be in that State or elsewhere; that the tax shall be 2 per cent of the clear value of so much of the property as is transferred to or for the use of designated relatives of the decedent and 5 per cent of the clear value of so much of it as is transferred to or for the use of others; and that the clear value shall be ascertained by taking the gross value of the estate and deducting therefrom the decedent's debts and the expenses of administration, but without making any deduction for taxes paid to the United States or to any other State.

In applying this statute to the Frick estate the taxing officers included the value of the tangible personalty in New York and Massachusetts in the clear value on which they computed the tax; and in fixing that value refused to make any deduction on account of the estate tax paid to the United States or the stock-transfer

[1]This consisted of rare paintings, rugs, furniture, bronzes, porcelains and other art treasures known as "The Frick Collection" and housed in a building in New York City specially constructed for the purpose.

[2]This consisted of furniture, household furnishings, automobiles, tools, etc., in Mr. Frick's New York house and garage.

[3]This consisted of paintings, other objects of art, furniture, household furnishings, farming implements, etc., on Mr. Frick's estate at Prides Crossing.

taxes paid to other States. In proceedings which reached the Supreme Court of the State the action of the taxing officers and the resulting tax were upheld by that court, 277 Pa. 242. The matter was then brought here on writs of error under section 237 of the Judicial Code.

The plaintiffs in error are the executors and an interested legatee. They contended in the state court, and contend here, that in so far as the Pennsylvania statute attempts to tax the transfer of tangible personal property having an actual situs in States other than Pennsylvania it transcends the power of that State, and thereby contravenes the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

This precise question has not been presented to this Court before, but there are many decisions dealing with cognate questions which point the way to its solution. These decisions show, first, that the exaction by a State of a tax which it is without power to impose is a taking of property without due process of law in violation of the Fourteenth Amendment; secondly, that while a State may so shape its tax laws as to reach every object which is under its jurisdiction it cannot give them any extra-territorial operation; and, thirdly, that as respects tangible personal property having an actual situs in a particular State, the power to subject it to state taxation rests exclusively in that State, regardless of the domicil of the owner. *Cleveland, Painesville and Ashtabula R. R. Co.* v. *Pennsylvania,* 15 Wall. 300, 319, 325; *Louisville and Jeffersonville Ferry Co.* v. *Kentucky,* 188 U. S. 385, 396; *Old Dominion Steamship Co.* v. *Virginia,* 198 U. S. 299; *Delaware, Lackawana and Western R. R. Co.* v. *Pennsylvania,* 198 U. S. 341, 356; *Union Refrigerator Transit Co.* v. *Kentucky,* 199 U. S. 194; *Western Union Telegraph Co.* v. *Kansas,* 216 U. S. 1, 38; *International Paper Co.* v. *Massachusetts,* 246 U. S. 135, 142.

In *Union Refrigerator Transit Co.* v. *Kentucky* the question presented was whether, consistently with the restriction imposed by the due process of law clause of the Fourteenth Amendment, the State of Kentucky could tax a corporation of that State upon its tangible personal property having an actual situs in other States. The question was much considered, prior cases were reviewed, and a

negative answer was given. The grounds of the decision are reflected in the following excerpts from the opinion:

"It is also essential to the validity of a tax that the property shall be within the territorial jurisdiction of the taxing power. Not only is the operation of state laws limited to persons and property within the boundaries of the State, but property which is wholly and exclusively within the jurisdiction of another State, receives none of the protection for which the tax is supposed to be the compensation. This rule receives its most familiar illustration in the cases of land which, to be taxable, must be within the limits of the State. Indeed, we know of no case where a legislature has assumed to impose a tax upon land within the jurisdiction of another State, much less where such action has been defended by any court. It is said by this Court in the *Foreign-held Bond case*, 15 Wall. 300, 319, that no adjudication should be necessary to establish so obvious a proposition as that property lying beyond the jurisdiction of a State is not a subject upon which her taxing power can be legitimately exercised. The argument against the taxability of land within the jurisdiction of another State applies with equal cogency to tangible personal property beyond the jurisdiction. It is not only beyond the sovereignty of the taxing State, but does not and cannot receive protection under its laws."

"The arguments in favor of the taxation of intangible property at the domicile of the owner have no application to tangible property. The fact that such property is visible, easily found and difficult to conceal, and the tax readily collectible, is so cogent an argument for its taxation at its *situs*, that of late there is a general consensus of opinion that it is taxable in the State where it is permanently located and employed and where it receives its entire protection, irrespective of the domicil of the owner."

"The adoption of a general rule that tangible personal property in other States may be taxed at the domicil of the owner involves possibilities of an extremely serious character. Not only would it authorize the taxation of furniture and other property kept at country houses in other States or even in foreign countries, [and] of stocks of goods and merchandise kept at branch establishments when already taxed at the State of their *situs*, but of that enormous mass of personal property belonging to railways and other corporations which might be taxed in the State where they are incorporated, though their charters contemplated the construction and operation of roads wholly outside the State, and sometimes across the continent, and when in no other particular they are subject to its laws and entitled to its protection."

In *United States* v. *Bennett*, 232 U. S. 299, 306, where this Court had occasion to explain the restrictive operation of the due pro-

cess of law clause of the Fourteenth Amendment, as applied to the taxation by one State of property in another, and to distinguish the operation of the like clause of the Fifth Amendment, as applied to the taxation by the United States of a vessel belonging to one of its citizens and located in foreign waters, it was said:

"The application to the States of the rule of due process relied upon comes from the fact that their spheres of activity are enforced and protected by the Constitution and therefore it is impossible for one State to reach out and tax property in another without violating the Constitution, for where the power of the one ends the authority of the other begins. But this has no application to the Government of the United States so far as its admitted taxing power is concerned. It is coextensive with the limits of the United States; it knows no restriction except where one is expressed in or arises from the Constitution and therefore embraces all the attributes which appertain to sovereignty in the fullest sense. Indeed the existence of such a wide power is the essential resultant of the limitation restricting the States within their allotted spheres."

Other decisions show that the power to regulate the transmission, administration, and distribution of tangible personal property on the death of the owner rests with the State of its situs, and that the laws of other States have no bearing save as that State expressly or tacitly adopts them — their bearing then being attributable to such adoption and not to any force of their own. *Mager* v. *Grima*, 8 How. 490, 493; *Crapo* v. *Kelly*, 16 Wall. 610, 630; *Kerr* v. *Moon*, 9 Wheat. 565, 571; *Blackstone* v. *Miller*, 188 U. S. 189, 204; *Bullen* v. *Wisconsin*, 240 U. S. 625, 631; *Bank of Augusta* v. *Earle*, 13 Pet. 519, 589; *Hilton* v. *Guyot*, 159 U. S. 113, 163, 166.

The Pennsylvania statute is a tax law, not an escheat law. This is made plain by its terms and by the opinion of the state court. The tax which it imposes is not a property tax but one laid on the transfer of property on the death of the owner. This distinction is stressed by counsel for the State. But to impose either tax the State must have jurisdiction over the thing that is taxed, and to impose either without such jurisdiction is mere extortion and in contravention of due process of law. Here the tax was imposed on the transfer of tangible personalty having an actual situs in other States—

New York and Massachusetts. This property, by reason of its character and situs, was wholly under the jurisdiction of those States and in no way under the jurisdiction of Pennsylvania. True, its owner was domiciled in Pennsylvania, but this neither brought it under the jurisdiction of that State nor subtracted anything from the jurisdiction of New York and Massachusetts. In these respects the situation was the same as if the property had been immovable realty. The jurisdiction possessed by the States of the situs was not partial but plenary, and included power to regulate the transfer both *inter vivos* and on the death of the owner, and power to tax both the property and the transfer.

Mr. Justice Story said in his work on Conflict of Laws, sec. 550: "A nation within whose territory any personal property is actually situate has as entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there. It may regulate its transfer, and subject it to process and execution, and provide for and control the uses and disposition of it, to the same extent that it may exert its authority over immovable property." And in *Pullman's Car Company* v. *Pennsylvania,* 141 U. S. 18, 22, where this Court held the actual situs of tangible personalty rather than the domicil of its owner to be the true test of jurisdiction and of power to tax, it was said: "No general principles of law are better settled, or more fundamental, than that the legislative power of every State extends to all property within its borders, and that only so far as the comity of that State allows can such property be affected by the law of any other State. The old rule expressed in the maxim *mobilia sequuntur personam,* by which personal property was regarded as subject to the law of the owner's domicil, grew up in the Middle Ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself. In modern times, since the great increase in amount and variety of personal property, not immediately connected with the person of the owner, that rule has yielded more and more to the *lex situs,* the law of the place where the property is kept and used."

In support of the tax counsel for the State refer to statutes of New York and Massachusetts evidencing an election by those States to accept and give effect to the domiciliary law regulating the

transfer of personal property of owners dying while domiciled in other States; and from this they contend that the transfer we are considering was brought under the jurisdiction of Pennsylvania and made taxable there. We think the contention is not sound. The statutes do not evidence a surrender or abandonment of jurisdiction, if that were admissible. On the contrary, they in themselves are an assertion of jurisdiction and an exercise of it. They declare what law shall apply and require the local courts to give effect to it. And it should be observed that here the property was administered in those courts and none of it was taken to the domiciliary State. Obviously the accepted domiciliary law could not in itself have any force or application outside that State. Only in virtue of its express or tacit adoption by the States of the situs could it have any force or application in them. Through its adoption by them it came to represent their will and this was the sole basis of its operation there. Burdick on American Constitution, sec. 257. In keeping with this view New York and Massachusetts both provide for the taxation of transfers under the adopted domiciliary law; and they have imposed and collected such a tax on the transfer we are now considering.

Counsel for the State cite and rely on *Blackstone* v. *Miller*, 188 U. S. 189, and *Bullen* v. *Wisconsin*, 240 U. S. 625. Both cases related to intangible personalty, which has been regarded as on a different footing from tangible personalty. When they are read with this distinction in mind, and also in connection with other cases before cited, it is apparent that they do not support the tax in question.

We think it follows from what we have said that the transfer of the tangible personalty in New York and Massachusetts occurred under and in virtue of the jurisdiction and laws of those States and not under the jurisdiction and laws of Pennsylvania, and therefore that Pennsylvania was without power to tax it.

One ground on which the state court put its decision was that, in taxing the transfer of the property which the decedent owned in Pennsylvania, it was admissible to take as a basis for computing the tax the combined value of that property and the property in New York and Massachusetts. Of course, this was but the equivalent of saying that it was admissible to measure the tax by a standard which took no account of the distinction between what

the State had power to tax and what it had no power to tax, and which necessarily operated to make the amount of the tax just what it would have been had the State's power included what was excluded by the Constitution. This ground, in our opinion, is not tenable. It would open the way for easily doing indirectly what is forbidden to be done directly, and would render important constitutional limitations of no avail. If Pennsylvania could tax according to such a standard other States could. It would mean, as applied to the Frick estate, that Pennsylvania, New York and Massachusetts could each impose a tax based on the value of the entire estate, although severally having jurisdiction of only parts of it. Without question each State had power to tax the transfer of so much of the estate as was under its jurisdiction, and also had some discretion in respect of the rate; but none could use that power and discretion in accomplishing an unconstitutional end, such as indirectly taxing the transfer of the part of the estate which was under the exclusive jurisdiction of others. *Western Union Telegraph Co.* v. *Foster,* 247 U. S. 105, 114, and cases cited; *Looney* v. *Crane Company,* 245 U. S. 178, 188; *International Paper Co.* v. *Massachusetts,* 246 U. S. 135, 141; *Air-Way Corporation* v. *Day,* 266 U. S. 71, 81; *Wallace* v. *Hines,* 253 U. S. 66, 69; *Louisville and Jeffersonville Ferry Company* v. *Kentucky,* 188 U. S. 385, 395.

The state court cited in support of its view *Maxwell* v. *Bugbee,* 250 U. S. 525, 539. The case is on the border line, as is evidenced by the dissent of four members of the Court. But it does not go so far as its citation by the state court suggests. The tax there in question was one imposed by New Jersey on the transfer of stock in a corporation of that State. The stock was part of the estate of a decedent who had resided elsewhere. The state statute, described according to its essence, provided for a tax graduated in rate according to the value of the entire estate, and required that where the estate was partly within and partly without the State the transfer of the part within should bear a proportionate part of what according to the graduated rate would be the tax on the whole. The only bearing which the property without the State had on the tax imposed in respect of the property within was that it affected the rate of the tax. Thus, if the entire estate had a value

which put it within the class for which the rate was three per cent, that rate was to be applied to the value of the property within the State in computing the tax on its transfer, although its value separately taken would put it within the class for which the rate was two per cent. There was no attempt, as here, to compute the tax in respect of the part within the State on the value of the whole. The Court sustained the tax, but distinctly recognized that the State's power was subject to constitutional limitations, including the due process of law clause of the Fourteenth Amendment, and also that it would be a violation of that clause for a State to impose a tax on a thing within its jurisdiction "in such a way as to really amount to taxing that which is beyond its authority."

Another case cited by the state court is *Plummer* v. *Coler,* 178 U. S. 115, where it was held that a State, in taxing the transfer by will or descent of property within its jurisdiction, might lawfully measure the tax according to the value of the property, even though it included tax-exempt bonds of the United States; and this because the tax was not on the property but on the transfer. We think the case is not in point here. The objection to the present tax is that both the property and the transfer were within the jurisdiction of other States and without the jurisdiction of the taxing State.

For the reasons which have been stated it must be held that the Pennsylvania statute, in so far as it attempts to tax the transfer of tangible personalty having an actual situs in other States, contravenes the due process of law clause of the Fourteenth Amendment and is invalid.

The next question relates to the provision which requires that, in computing the value of the estate for the purpose of fixing the amount of the tax, stocks in corporations of other States shall be included at their full value without any deduction for transfer taxes paid to those States in respect of the same stocks.

The decedent owned many stocks in corporations of States, other than Pennsylvania, which subjected their transfer on death to a tax and prescribed means of enforcement which practically gave those States the status of lienors in possession.[4] As those

[4]The nature of the tax and the provisions adopted for enforcing it are illustrated by c. 357, secs. 1, 2, 13, Laws Kansas 1915, p. 452; c. 33, secs. 1, 6, 7, Barnes' West Virginia Code, p. 586.

States had created the corporations issuing the stocks, they had power to impose the tax and to enforce it by such means, irrespective of the decedent's domicil and the actual situs of the stock certificates. Pennsylvania's jurisdiction over the stocks necessarily was subordinate to that power. Therefore to bring them into the administration in that State it was essential that the tax be paid. The executors paid it out of moneys forming part of the estate in Pennsylvania and the stocks were thereby brought into the administration there. We think it plain that such value as the stocks had in excess of the tax is all that could be regarded as within the range of Pennsylvania's taxing power. *Estate of Henry Miller,* 184 Cal. 674, 683. So much of the value as was required to release the superior claim of the other States was quite beyond Pennsylvania's control. Thus the inclusion of the full value in the computation on which that State based its tax, without any deduction for the tax paid to the other States, was nothing short of applying that State's taxing power to what was not within its range. That the stocks, with their full value, were ultimately brought into the administration in that State does not help. They were brought in through the payment of the tax in the other States out of moneys of the estate in Pennsylvania. The moneys paid out just balanced the excess in stock value brought in. Yet in computing the tax in that State both were included.

We are of opinion that in so far as the statute requires that stocks of other States be included at their full value, without deducting the tax paid to those States, it exceeds the power of the State and thereby infringes the constitutional guaranty of due process of law.

The remaining question relates to the provision declaring that, in determining the value of the estate for the purpose of computing the tax, there shall be no deduction of the estate tax paid to the United States. The plaintiffs in error contend that this provision is invalid, first, as being inconsistent with the constitutional supremacy of the United States, and, secondly, as making the state tax in part a tax on the federal tax.

In support of the contention we are referred to several cases in which state courts have held that the federal tax should be deducted in determining the value on which such a state tax is computed. But the cases plainly are not in point. In them the state

courts were merely construing an earlier type of statute requiring that the state tax be computed on the clear or net value of the estate and containing no direction respecting the deduction of the federal tax. An earlier Pennsylvania statute of that type was so construed. Later statutes in the same states expressly forbidding any deduction of the federal tax have been construed according to their letter. This is true of the present Pennsylvania statute. The question here is not how the statute shall be construed, but whether, as construed by the state court, it is open to the constitutional objections urged against it.

While the federal tax is called an estate tax and the state tax is called a transfer tax, both are imposed as excises on the transfer of property from a decedent and both take effect at the instant of transfer. Thus both are laid on the same subject, and neither has priority in time over the other. Subject to exceptions not material here, the power of taxation granted to the United States does not curtail or interfere with the taxing power of the several States. This power in the two goverments is generally so far concurrent as to render it admissible for both, each under its own laws and for its own purposes, to tax the same subject at the same time. A few citations will make this plain. In *Gibbons* v. *Ogden,* 9 Wheat. 1, 199, Chief Justice Marshall, speaking for this Court, said: "Congress is authorized to lay and collect taxes, etc., to pay the debts, and provide for the common defense and general welfare of the United States. This does not interfere with the power of the States to tax for the support of their own governments; nor is the exercise of this power by the States an exercise of any portion of the power that is granted to the United States. In imposing taxes for State purposes, they are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the States. When, then, each government exercises the power of taxation, neither is exercising the power of the other." Mr. Justice Story, in his Commentaries on the Constitution, sec. 1068, said: "The power of Congress, in laying taxes, is not necessarily or naturally inconsistent with that of the States. Each may lay a tax on the same property, without interfering with the action of the other." And in *Knowlton* v. *Moore,* 178 U. S. 41, 58-60, Mr. Justice White, speaking for

this Court, said that "under our constitutional system both the national and state governments, moving in their respective orbits, have a common authority to tax many and diverse objects;" and he further pointed out that the transfer of property on death "is a usual subject of taxation" and one which falls within that common authority.

With this understanding of the power in virtue of which the two taxes are imposed, we are of opinion that neither the United States nor the State is under any constitutional obligation in determining the amount of its tax to make any deduction on account of the tax of the other With both the matter of making such a deduction rests in legislative discretion. In their present statutes both direct that such a deduction be not made. It is not as if the tax of one, unless and until paid, presented an obstacle to the exertion of the power of the other. Here both had power to tax and both exercised it as of the same moment. Neither encroached on the sphere or power of the other. The estate out of which each required that its tax be paid is much more than ample for the payment of both taxes. No question of supremacy can arise in such a situation. Whether, if the estate were not sufficient to pay both taxes, that of the United States should be preferred (see *Lane County* v. *Oregon*, 7 Wall. 71, 77) need not be considered. That question is not involved here.

The objection that when no deduction is made on account of the federal tax the state tax becomes to that extent a tax on the federal tax and not a tax on the transfer is answered by what already has been said. But by way of repetition it may be observed that what the State is taxing is the transfer of particular property, not such property depleted by the federal tax. The two taxes were concurrently imposed and stand on the same plane, save as the United States possibly might have a preferred right of enforcement if the estate were insufficient to pay both.

In conclusion we hold, first, that the value of the tangible personalty in New York and Massachusetts should not have been included in determining the clear value on which the Pennsylvania tax was computed; secondly, that in determining such clear value the stocks in corporations of other States should not have been included at their full value without deducting the transfer tax paid

to such States in respect of those stocks; and thirdly, that there was no error in refusing to make any deduction from the clear value on account of the estate tax imposed by the United States.

Petitions for certiorari were presented in these cases, but as the cases are properly here on writs of error, the petitions will be denied.

Judgments reversed on writs of error.
Petitions for certiorari denied.

A true copy.

Test:

Clerk, Supreme Court, U. S.